

REMARKS

In the present application, claims 1, 2, 65-73, 75, 79-87, 90-98, and 101-104 were pending. Applicants thank the examiner for the indication that claims 71, 85 and 96 would be allowed if rewritten in independent form incorporating their respective base claim and any intervening claims. Claims 1, 2, 65-70, 72-73, 75, 79-84, 86-87, 90-95, 97-98, and 101-104 stand finally rejected in the July 15, 2008 Final Office Action. In this response, claims 98 and 101-104 are cancelled in addition to the previously cancelled claims. Claim 87 is amended to improve form and clarity. Reconsideration of the final rejection of the present application including claims 1, 2, 65-73, 75, 79-87, 90-97 as amended is respectfully requested.

Claims 98, 102 and 103 stand rejected under 35 USC §102(e) as anticipated by U.S. Patent No. 5,609,635 to Michelson. Claims 98, 102 and 104 also stand rejected under 35 USC 102(b) as anticipated by WO 90/00037 to Michelson. Claims 98 and 101-104 also stand rejected under 35 USC 102(b) as anticipated by U.S. Patent No. 4,951,839 to Kong. These claims are cancelled in this response, mooted these rejections.

Claims 1, 2, 65-70, 72-73, 75, 79-84, 86, 87, 90-95, and 97 also stand rejected under 35 USC §102(b) as anticipated by Kong. The examiner asserts that Kong discloses an occlusion body with dispensing unit 20, and that the outer surface of the occlusion body is the top of side wall 30, the inner surface of the occlusion body is the bottom surface of sidewall 30 between fingers 28 that rests on top of the container 26, the engaging surface of the occlusion body is the outside surface of wall 30, and the aperture extending between the inner and outer surfaces of the occlusion body is the top of chamber 22.

It is well established that "an invention is anticipated if the same device, including all the claim limitations, is shown in a single prior art reference. Every element of the claimed invention must be literally present, arranged as in the claim." Richardson v. Suzuki Motor Co. Ltd., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The claims must not be treated as "mere catalogs of separate parts, in disregard of the part-to-part relationships set forth in the claims and that give the claims their meaning." Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Company et al., 730

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F.2d 1452, 1459, 221 USPQ 481, 486 (Fed. Cir. 1984). As a result, a reference that coincidentally lists features of a claim without describing the claimed arrangement, relationship, and organization of such features cannot anticipate. It is respectfully submitted that Kong fails to anticipate claim 1 at least for the following reasons.

Claim 1 recites "an occlusion body sized and shaped for blocking the opening" of the fusion device. The Office Action asserts that the entire dispensing device 20 is an occlusion body. However, the only portion of the dispensing device 20 that blocks the opening of container 26 is removable cap 48 when it is fitted around sidewall 30. When cap 48 is removed, sidewall 30 does not include any occlusion body that is sized and shaped to block the opening of container 26. Rather, sidewall 30 is designed to avoid blocking the opening of container 26 to permit liquid to be dispensed from container 26.

Furthermore, when removable cap 48 is attached to sidewall 30, there is no "occlusion body further including at least one aperture between said inner and outer surfaces sized to permit bone ingrowth through said occlusion body". Rather, cap 48 is solid and includes no apertures so that it may be used to hold a pre-measured amount of liquid in dispensing device 20 and prevents the top of chamber 22 from forming any aperture opening at the top surface of sidewall 30. Therefore, Kong fails to disclose the occlusion body recited in claim 1 that is sized and shaped to block the opening of container 26, or if cap 48 is considered to be the occlusion body, it fails to disclose the at least one bone ingrowth aperture between the inner and outer surfaces of the occlusion body recited in claim 1. Therefore, withdrawal of the rejection of claim 1 along with claims 2 and 65-73 depending from claim 1 is respectfully requested.

Claim 75 recites "an occlusion body sized and shaped for blocking the opening" of the hollow fusion device and also said occlusion body further including at least one aperture between said inner and outer surfaces sized to permit bone ingrowth through said occlusion body". In Kong, the only portion of the dispensing device 20 that blocks the opening of container 26 is removable cap 48 when it is fitted around sidewall 30. When cap 48 is removed, sidewall 30 does not include any occlusion body that is sized and shaped to block the opening of container 26. Rather, sidewall 30 and its top and

bottom surfaces are designed to avoid blocking the opening of container 26 to permit liquid to be dispensed from container 26 into dispensing device 20.

Furthermore, when removable cap 48 is attached to sidewall 30, there is no "at least one aperture between said inner and outer surfaces sized to permit bone ingrowth through said occlusion body". Rather, cap 48 is solid and includes no apertures so that it may be used to hold a pre-measured amount of liquid in dispensing device 20 and prevents chamber 22 from forming any aperture opening at the top surface of sidewall 30. Therefore, Kong fails to disclose the occlusion body recited in claim 75 that is sized and shaped to block the opening of container 26, or if cap 48 is considered to be the occlusion body, it fails to disclose the at least one bone ingrowth aperture between the inner and outer surfaces of the occlusion body recited in claim 75. Therefore, withdrawal of the rejection of claim 75 along with claims 79-86 depending from claim 75 is respectfully requested.

Claim 87 recites "an occlusion body including an outer surface, an opposite inner surface, and an engaging surface extending from said inner surface toward said outer surface with said occlusion body sized and shaped for blocking the opening, said occlusion body including at least one osteogenic aperture extending therethrough between said outer surface and said inner surface". In Kong, the only portion of the dispensing device 20 that blocks the opening of container 26 is removable cap 48 when it is fitted around sidewall 30. When cap 48 is removed, sidewall 30 does not include any occlusion body that is sized and shaped to block the opening of container 26 since sidewall 30 and its top and bottom surface are designed to avoid blocking the opening of container 26 to permit liquid to be dispensed from container 26 into dispensing unit 20.

Furthermore, when removable cap 48 is attached to sidewall 30, there is no "at least one osteogenic aperture extending therethrough between said outer surface and said inner surface" of the occlusion body. Rather, cap 48 is solid and includes no apertures so that it may be used to hold a pre-measured amount of liquid in dispensing device 20 and prevents chamber 22 from forming any aperture that opens at the top surface of sidewall 30. Therefore, Kong fails to disclose the occlusion body recited in claim 87 that is sized and shaped to block the opening of container 26, or if cap 48 is considered to be the

occlusion body, it fails to disclose the at least one osteogenic aperture between the inner and outer surfaces of the occlusion body recited in claim 75. Therefore, withdrawal of the rejection of claim 87 along with claims 90-97 depending from claim 87 is respectfully requested.

Reconsideration and allowance of the present application including claims 1, 2, 65-73, 75, 79-87 and 90-97 is hereby respectfully solicited. The Examiner is welcome to contact the undersigned to resolve any outstanding issue with regard to the present application.

Respectfully submitted

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